

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ALEXANDRA MATALAVAGE,  
Plaintiff,

vs.

20-CV-1254-WMS-LGF

ATTORNEY'S AFFIRMATION IN  
SUPPORT OF PLAINTIFF'S  
MOTION TO COMPEL

SHERIFF OF THE COUNTY OF NIAGARA,  
ET AL.,  
Defendant.

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State of New York                    )  
County of Erie                        )

Anna Marie Richmond, an attorney admitted to practice in the State of New York,  
affirms under the penalty of perjury:

1. I am an attorney for the Plaintiff in the above-captioned matter; I make this affirmation in support of Plaintiff's Motion to Compel.
2. There are currently four Defendants in this action: the County of Niagara, the Sheriff of the County of Niagara, Michael Filicetti, who was Undersheriff at the time of the events at issue, and is currently Sheriff, and James Payne, who was Chief Jail Administrator at the time of the events at issue, and is now retired.
3. Plaintiff served Interrogatories on each individual Defendant, and a single set of Document Requests directed to all Defendants on May 19, 2021. Exhibits A, B, C, D, E, F.
4. Pursuant to mutually agreed-upon extensions, and an Amended Scheduling Order (Item No. 32) Defendants served responses to Plaintiff's discovery requests on October 22, 2021. Exhibits G, H, I, J, K.
5. Defendants' initial production of documents was comprised of 2719 pages of

documents organized into five folders labeled Response No. 1, Response No. 2, Response No. 9, Response No. 64 and Response No. 65. Response No. 1 was further subdivided into 14 individual files labeled as follows: 1 525-2019-00124 Bates DEF 000001-000482, 2 525-2019-00825 Bates DEF 000483-001339, 3 525-2019-01448 Bates DEF 001340-001436, 4 EEOC FOIA Request Bates DEF 001437-001483, 5 PERB CHARGE U-31735 Bates DEF 1483-1521, PERB CHARGE U-317136 Bates 001522-001560, 7 PERB CHARGES ARBITRATION AND DOCS PRODUCED TO HAYES on 1 23 20 Bates 001561-002536, 8 UNEMPLOYMENT DOCS Bates DEF002537-002543, 9 Criminal Investigation Report – CONFIDENTIAL DESIGNATION redacted(13193385.1) Bates DEF 002544-00255, 10 Criminal Investigation Communications – CONFIDENTIAL DESIGNATION redacted(1319334.1) Bates DEF 002552-002579, 11 ARREST AND FELONY COMPLAINTS Bates DEF 0025800-002586, 12 Field Case Report – CONFIDENTIAL DESIGNATION (13184509.1) Bates DEF 002587-002588, 13 BUFFALO NEW THRU ADDITIONAL MIN STDS Bates DEF 0202589-002618, 14 Correction Sergeants Bates DEF002720-002725.

6. Plaintiff's counsel reviewed Defendants' responses, and on January 28, 2022, sent a letter to Defendants' counsel objecting to certain of Defendants' responses, and clarifying, narrowing and focusing certain of Plaintiff's Interrogatories and Document Requests in response to Defendants' objections. Exhibit L

7. On January 28, 2022, the discovery deadline was March 31, 2022, and the deadline for filing motions to compel was February 28, 2022. Item No. 32.

8. Defendants were unable to complete their response to Plaintiff's January 28, letter by the end of March, and the parties were unable to schedule depositions.

9. On March 30, 2022, Defendants moved, on consent, for a further extension of the

Case Management Order. Item 33.

10. The Court granted the motion, Item 35, and established a discovery deadline of August 31, 2022.

11. Plaintiff's counsel mailed an inquiry concerning Defendants' production and a request for copies of two documents referenced in Defendants' production on May 11, 2022. Exhibit M.

12. Defendants' counsel did not reply, and on May 20, 2022, Plaintiff's counsel sent another letter. Exhibit N.

13. Via email, the parties informally agreed to a extension of the discovery deadlines in the Amended Case Management Order on May 27, 2022, to accommodate Plaintiff's Expert's COVID illness. Exhibit O.

14. On June 3, 2022, Defendants' counsel emailed Plaintiff's counsel and advised that Defendants would get their response to Plaintiff's counsel no later than close of business on June 7, 2022. Exhibit P.

15. On June 8, 2022, Defendants responded to Plaintiff's January 28, 2022 letter. Exhibit Q.

16. Defendants turned over more documents and referenced additional documents that would be forthcoming, *Id.*, p. 4.

17. Between June 22 and June 27, 2022, Plaintiff requested the promised "additional documents," and were advised by Defendants' counsel that counsel "will do our best to get them to you by June 30." Exhibit R.

18. Defendants produced a privilege log, Exhibit S, and additional materials on July 1, 2022.

19. On July 6, 2022, having reviewed some of Defendants' responses and identified a discrepancy in numbering of responses on behalf of Defendant Payne, Plaintiff's counsel sent an email to Defendants' counsel asking for clarification. Exhibit T

20. On July 19, 2022, having reviewed all of the materials Defendants produced on June 8 and July 1, Plaintiff's counsel sent another letter to Defendants' Counsel that identified deficiencies, and reiterated requests. Exhibit U

21. In their July 19, letter, Plaintiff's counsel wrote (on the final page):

As we have repeatedly stated in letters, emails and voice messages, we would welcome the opportunity to discuss any and all of the above with you, both in the spirit of cooperation, and as required by the Local Rules of Practice. We invite you to schedule a meeting with us to address these issues.

In the event that you choose not to meet, we reiterate our request that you respond in full to the above requests not later than 5:00 p.m. on July 29, 2022.

22. Defendants responded to that letter via email on July 30, 2022, declining to produce anything further. Exhibit V.

23. On August 2, 2022, Plaintiff's counsel replied via email, focusing on seven key concerns, and again offering to discuss the issues with Defendants' Counsel in an effort "to avoid a motion to compel." Exhibit W.

24. Plaintiff's counsel requested a response from Defendants' counsel on or before August 8. *Id.*

25. To date, Defendants have not responded to Plaintiff's counsel's August 2 email.

Dated: Buffalo, New York  
August 12, 2022

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